ORIGINAL
FILE

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of:	)	
	)	
Modification of Section 90.266(b)	)	RM-8030
and Other Provisions of the FCC's	)	
Regulations Affecting the Ownership	)	
of Specialized Mobile Radio (SMR)	)	
Systems Within 40 Miles of Each Other	)	

To: The Commission

REPLY OF A & B ELECTRONICS, INC.

A & B Electronics, Inc. ("A & B") pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission")[1/] by its attorneys, hereby respectfully submits this Reply in response to the pleadings of interested parties filed in the above referenced proceeding.[2/]

On May 26, 1992 A & B, one of the major providers of Specialized Mobile Radio ("SMR") service in the southwestern United States, petitioned the Commission to initiate a rule making proceeding designed to substantially modify the existing regulations which limit the number of channels SMR operators can accumulate in a geographic area. As A & B pointed out, these regulations are an impediment to the growth of SMR service.

1/ 47 C.F.R. § 1.405(b).

2/ The Petition for Rule Making ("Petition") was referenced in a Commission Public Notice, Report No. 1899, released July 13, 1992.

They limit the ability to implement larger, more efficient trunked systems, inhibit the growth of wide area SMR service and stifle entrepreneurs' ability to offer interconnect service. A & B proposed two additions to current rule section 90.627(b) which would permit the aggregation of mature SMR systems and the institution of a system license. A & B also recommended the modification of existing rule section 90.627(b)(2) to reflect the Commission's acceptance of the aggregate loading concept. A & B's proposals are designed to ameliorate the negative effects of the current 40-mile regulations, while protecting against spectrum hoarding or warehousing.

Nine parties submitted pleadings in response to A & B's Petition.[3/] Four of those entities, who are either SMR licensees or their representatives, generally supported the Petition. Statements in Opposition were filed by five oil and gas/utility licensees or their representatives. By this Reply, A & B responds to the comments, both positive and negative, of these other interested parties. Accordingly, A & B is pleased to have this opportunity to further address the significant issues raised in its Petition for Rule Making.

REPLY

The responses to A & B's Petition substantiate that there is a need for revision of the Commission's regulations which govern the ownership of SMR facilities. There are

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3/ Pleadings were submitted by Idaho Communications Limited Partnership ("ICLP"), Fleet Call, Inc. ("FCI"), American Mobile Telecommunications Association, Inc. ("AMTA"), National Association of Business and Educational Radio, Inc. ("NABER"), American Petroleum Institute ("API"), Southern California Gas Company ("SCG"), Utilities Telecommunications Council ("UTC"), Northern States Power Company ("NSP") and Southern California Edison ("SCE").

differences in the approach the various parties would take to accomplish this change. However, all of the SMR licensees and their representatives who submitted comments agree that the current system thwarts the growth of the SMR industry.[4/]

ICLP strongly supports the A & B Petition. Its Comments draw a distinction between A & B's Petition and the proposal submitted recently by FCI.[5/] ICLP states that A & B's approach is a "less disruptive and more traditional, efficient, business solution consistent with the development of other communications industries."[6/] A & B agrees. As others pointed out in connection with FCI's Petition, there may be adverse consequences to issuing authorizations for substantial blocks of SMR spectrum based upon an auction procedure. While A & B does not wish to burden the record in this proceeding with a reiteration of those arguments, it believes that its approach more carefully balances the interests of promoting the greatest employment of the spectrum, while protecting against spectrum hoarding or warehousing.

ICLP departs from A & B's Petition by recommending that the Commission consider a relaxation of the 70 mobile per channel standard in smaller markets so that licensees in those areas could achieve aggregate loading more easily. A & B has no objection to this approach. It recognizes that there may be administrative difficulties in determining the locations where a relaxed standard should apply. Nevertheless, to the extent that ICLP's suggestion would make available additional spectrum to entities who

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4/ ICLP, FCI, AMTA and NABER all state that there is a need to modify or eliminate, the 40-mile rule.

5/ See RM-7985, filed April 22, 1992.

6/ ICLP comments at p. 3.

are currently employing their channels and providing service to customers, A & B does not object to a modification of its earlier proposal if it can be effectively administered by the Commission.

FCI states that A & B does not go far enough in overcoming the regulatory barriers to implementing wide area SMR systems. It particularly objects to the Commission's rule (which A & B would essentially leave intact) which limits the assignment of 800 MHz trunked channels to five at a time. As noted above, the limitation on the assignment of channels to five at a time is designed to strike a balance between placing spectrum in use, and preventing hoarding of channels. FCI's plan does not adequately address the fundamental tension between these two goals, and it has been faulted for potentially allowing large blocks of spectrum to remain unused, although licensed.

FCI also complains that the proposal offers no relief to new entrants unless they first acquire systems that have been in operation for five years or more or are already loaded. It argues that the Commission should, instead, revise its rules to "directly enable bona fide applicants to acquire sufficient spectrum to provide advanced wide area SMR services."[7/] While FCI argued in response to A & B's Petition, and in connection with its own proposal, that bona fide applicants should be entitled to acquire sufficient spectrum, it failed to define how the Commission would determine whether an applicant was bona fide. It is precisely this concern that prompted A & B to define the system license concept. A system license would identify those entities which are bona fide SMR

7/ FCI Comments at p. 5.

operators and free them from the constraints of the 40-mile rule. A & B submits that this approach to determining whether an applicant is bona fide is substantially superior to FCI's approach which would primarily rely upon an applicant's ability to competitively bid for the use of spectrum.

FCI recommends that A & B's proposal be evaluated as a part of a comprehensive set of SMR rule revisions. That sentiment was shared by AMTA, which stated that the Commission should consider A & B's recommendations, as well as those contained in the recently submitted NABER petitions as part of a broader evaluation of the 800 MHz and 900 MHz regulatory structure. NABER, too, generally supports adoption of a Notice of Proposed Rule Making which would revise the 40-mile regulations. A & B does not object to the inclusion of its Petition in an omnibus proceeding designed to address the 40-mile rule and other regulations which restrict the growth of the SMR industry. However, all other similar recommendations should be included in a rule making proceeding of this nature. Therefore, the Commission must include the FCI and NABER recommendations in the rule making proceeding. Similarly, A & B notes that the Commission requested comments on Dial Page L.P.'s Request for Rule Waiver to Implement a Digital Trunked SMR System in Nine Southeastern States.[8/] The Dial Page request raises the same fundamental issues as those addressed by the A & B proposal, the FCI petition and the NABER proposals. These issues should all be considered by the Commission in a consolidated fashion and the regulations should be changed to reflect the SMR industry's development.

8/ Public Notice issued August 20, 1992 (DA 92-1144).

NABER generally supported revision of the 40-mile rule. However, it objected to the proposed limitation that A & B would impose on the elimination of the 40-mile rule to systems which are beyond their initial five year license period. It argued instead, for the rule revision it proposed, with construction as a prerequisite for 40-mile rule relief. A & B does not necessarily object to NABER's recommendation. Its suggestion was designed to provide relief for those entities that have demonstrated the ability to conduct SMR operations, either through the aggregate loading concept, or the continuation of their business for greater than five years. NABER's proposal would provide the ability to secure additional channels to more entities. A & B's approach is more conservative and would likely result in the authorization of SMR channels to those entities who have already demonstrated an ability to offer SMR service and wish to expand their operations.

API, SCG and UTC, in different forms, object to A & B's suggestion that the Commission recognize the aggregate loading concept it has already approved in other circumstances.[2/] A & B's suggestion that the Commission formalize, by inclusion in the rules, the aggregate loading criteria, is not an erosion of the existing 40-mile rule. It is simply a recognition of the Commission's already stated inclination to approve the acquisition of additional channels based on aggregate loading. The aggregate loading concept is critical to the promotion of wide area SMR systems. UTC's questions concerning "whether wide area systems and interconnect service are consistent with the

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2/ In re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd. 1533 (1991), recon. den., 6 FCC Rcd. 6989 (1991).

intent of establishing an SMR service" belie the organization's lack of understanding of the SMR industry and a desire to return to a 1940's approach to mobile communications regulations. It is not in the public interest to impose restrictive regulations on the SMR industry, already one of the fastest growing segments of the communications industry, which would thwart its ability to provide service to the public.[10/]

Finally, NABER, API, UTC, NSP and SCE express concern that the A & B proposal would allow any SMR licensee which has been designated a system licensee to be exempt from the 40-mile restrictions. They particularly note that without the 40-mile rules and the attendant loading requirements, SMRs will be able to, once they obtain a system license, secure channels designated primarily for other service pool applicants, through intercategory sharing regulations, without demonstrating loading. A & B continues to strongly believe that a system licensee should be exempt from the 40-mile regulations. These licensees should, therefore, be able to acquire additional channels from the Commission, so long as no more than five channels were unbuilt at one time. They could also acquire underloaded systems from existing SMRs.

It was not A & B's intention, however, that system licensees who establish their eligibility based upon the aggregation of channels licensed for greater than five years be permitted to secure the use of intercategory channels. Accordingly, A & B does not

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10/ A & B is disappointed in the sentiments expressed by API. As one of the largest providers of SMR service in the southwest, its customers include virtually every major U.S. oil and gas company. The SMR service provided by A & B in many instances supplements these companies internal communication systems and in other cases provides complete communications for a particular site or operational function.

object to a modification of the regulations to state that intercategory channels can only be obtained by SMR licensees based upon an adequate demonstration of loading, the lack of other SMR channels in the area, and the availability of channels in other service pools. However, the aggregate loading concept should be employed to determine whether intercategory channels would be available to system licensees. A & B concurs that where a licensee has not demonstrated a requirement for additional channels it should not be permitted to secure the use of channels designated primarily for other services. However, where a system licensee demonstrates a need for additional channels, other pools' frequencies should be accessible to it.

CONCLUSIONS

All parties who are either SMR licensees or their representatives, who submitted comments in response to A & B's Petition, recognize the need to change the Commission's 40-mile regulations. There are legitimate differences in the recommended approach the Commission may take. A & B's recommendations are designed to balance the Commission's interest in ensuring that SMR spectrum is fully employed with the need to prevent spectrum hoarding. However, it is evident that the Commission should initiate a proceeding designed to address the outdated rules. The Commission should consider all issues concerning the modification of the 40-mile regulations, including those proposed by FCI, in such a rule making proceeding.

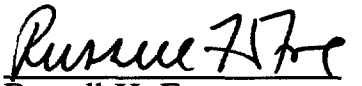
Many of the entities who submitted Oppositions to A & B's Petition demonstrate a lack of understanding of the SMR industry in particular, and the mobile communications industry in general. The aggregate loading concept, which A & B

proposes be formally recognized by the Commission, has already been employed to justify the existence of wide area SMR systems. A & B understands the concern of those entities who wish to ensure that intercategory frequency sharing is not permitted where the SMR operator requesting additional channels cannot demonstrate that its existing frequencies are fully employed. Accordingly, A & B does not object to a modification of its original proposal so that system licensees be permitted to secure intercategory channels only when their systems can demonstrate adequate loading, either on an aggregate basis or otherwise.

WHEREFORE, THE PREMISES CONSIDERED, A & B Electronics, Inc. hereby submits the foregoing Reply and urges the Commission to expeditiously initiate a Notice of Proposed Rule Making consistent with the recommendations contained herein.

Respectfully submitted,

A & B Electronics, Inc.

By: 
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DATED: August 27, 1992

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CERTIFICATE OF SERVICE

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